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July 16, 2003

**VIA ELECTRONIC FILING**

Marlene Dortch, Secretary,  
Federal Communications Commission  
445 12th Street SW  
Room TWB-204  
Washington, DC 20554

Re: CC Docket 02-33, Framework for Broadband Access to the Internet over Wireline Facilities; CC Docket 01-337, Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services

Dear Ms. Dortch:

Yesterday, Ed Cadieux of NuVox Communications, Russ Merbeth of Birch Telecom, Riley Murphy of KMC Telecom, John Heitmann of Kelley Drye & Warren LLP and the undersigned, on behalf of XO Communications, met with Jessica Rosenworcel, Legal Advisor to Commissioner Michael Copps, to discuss issues related to the above referenced proceedings. In particular, the parties urged the Commission to reject the tentative conclusions set forth in the above referenced dockets, including re-defining wireline broadband transmission under a new definition that would effectively overturn the Commission's *Computer Inquiries*. The attached materials were provided. In accordance with the Commission's rules one electronic

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copy of this notice and the attached materials are being provided for inclusion in the above referenced dockets.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ross A. Buntrock". The signature is written in a cursive, flowing style.

Ross A. Buntrock

cc: Jessica Rosenworcel, Legal Advisor, Commissioner Michael Copps

# **Appropriate Framework For Broadband Access to the Internet Over Wireline Facilities**

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CC Docket 02-33

CC Docket 01-337

July 15, 2003

**Birch, KMC, NuVox, XO**

# Overview

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- ❑ UNE-Based Competition Brings Broadband to Small and Medium Sized Business
- ❑ The RBOCs' Definitional Shell Game Makes No Sense
- ❑ Current UNE Unbundling Obligations Must Not Be Upended In this Proceeding
- ❑ Any "Relief" Granted to RBOCs Should Apply Only to Residential Retail Services Under Title II
- ❑ Conclusions: RBOCs remain dominant in the provision of broadband transmission telecommunications services to SMBs

# UNE-Based Competition Brings Broadband to Business

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- ❑ CLECs, using unbundled integrated T1 loops, are leaders in bringing broadband service offerings to small and medium sized business.
- ❑ Integrated T1 products are provisioned with a combination of UNEs and CLEC facilities, resulting in a robust growth opportunity for equipment manufacturers.
- ❑ This proceeding threatens CLEC access to facilities needed to provide broadband and threatens innovation.
- ❑ There is no demand dilemma (the “take rate” here is high – SMBs are generating a strong demand for broadband integrated T1 service offerings).

# The RBOCs' Definitional Shell Game Makes No Sense

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- ❑ The proposed redefinition of high speed “broadband” transmission services under a new statutory definition is neither legally sustainable, nor does it make sense as a policy matter.
- ❑ The Commission should not use this proceeding to overturn the Commission’s *Computer Inquiries* conclusions that broadband transmission, such as wireline broadband transmission used to provide access to the Internet, is a telecommunications service.
- ❑ RBOC assertions that elimination of Title II regulation will lead to lower end user prices and “increased competitive pressure” are baseless and contrary to common sense, as well as the Commission’s *Computer Inquiries* conclusions.
- ❑ There is no legal basis for the ILECs’ “regulatory parity” slogan.
- ❑ Title II regulations should continue to apply.

# The Record Does Not Support Overturning Current UNE Unbundling Obligations

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- ILECs are dominant in the provision of high speed services to SMBs (T1s, DS3s, frame, etc.).
- ILEC competition with cable modem service is virtually non-existent in the SMB market.
  - The ILECs are not being crushed in head-on competition with cable anywhere in the SMB market.
  - VZ admits that cable passes only 2.5 million of the estimated 10.5 million SMBs (See VZ 1/15/03 ex parte).
- Bottom line: there is no evidence that investment in broadband is lagging, and it is counter-intuitive to promote investment by incumbents at the expense of competition (and investment by CLECs and ISPs).

# To the Extent “Relief” Is Needed It Should Apply Only to Residential Retail Services Under Title II

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- Buying into the RBOCs’ legal theory that they provide no “telecommunications services” whenever their offerings include information services will lead down a path of no return.
- Once adopted, there would be nothing preventing the RBOCs from demanding the end to essentially all common carrier regulation.
  - Although the scope of the FCC notice apparently is limited to “broadband” information services, once the legal principle has been established, it is hard to see what would prevent the incumbent LECs from offering an information service, such as voicemail, integrated with every voice product, and declaring those voice services (which are virtually always offered to consumers over bottleneck local loop facilities) to be information services that are not subject to common carrier regulation by either the states or the FCC



## **To the Extent “Relief” Is Needed It Should Apply Only to Residential Retail Services Under Title II (cont’d)**

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- Without empirical evidence to show that regulations are inhibiting the deployment of advanced services, the Commission cannot compromise the statutory goals of competition, universal service, consumer protection and law enforcement assistance.
- If ILECs are facing intermodal competition from cable in the residential retail market, that is where the Commission should focus its consideration of eliminating regulatory burdens.
  - Eliminating regulatory burdens should be done within the context of Title II, not by reclassifying the underlying transmission component as something other than a telecommunications service.

# Conclusion

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- Bells are not entitled to “broadband” exemption from Title II and the Commission is not empowered to give it to them via the tentative conclusions announced in CC Docket No. 02-33.
- By virtue of their control over bottleneck transmission facilities, the Bells remain *dominant* in the SMB broadband market and are not entitled to the “relief” sought in CC Docket 01-337.